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ABSTRACT

The report discusses how Indian tribes can conserve and develop their own resources at their own pace and explores the options available to them as owners of valuable natural resources. Discussed are problems encountered by tribal leaders with various government agencies; the basic precepts of the Bureau of Indian Affairs; how the problems of Indian nations parallel problems of underdeveloped nations; the tribal structures and the tribal power regarding internal decision-making; what an investor looks for and what a tribe should look for in a deal; creating an environment for success; and management factors. Other topics covered are forms of agreement being used by developing countries--Federal leases, joint ventures, production sharing agreements, service contracts; financial institutions--the Federal Reserve System, banks, savings and loan associations, credit unions, mutual savings banks; uses of money by banks--business loans, mortgages, consumer loans, bank cards, farm loans, investments, trusts; and sources of credit--local banks, large eastern based commercial banks, insurance companies, minority enterprise small business investment companies, the American National Bank, the Indian Financing Act, Title I Indian Revolving Loan Fund, Title II Loan Guarantee and Insurance, Title III Interest Subsidies and Administrative Expenses, and Title IV Indian Business Grants. (NQ)

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AIO REPORT

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SUITE 403
600 SECOND STREET, N.W.
ALBUQUERQUE NM 87102
Americans for Indian Opportunity

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AMERICANS for INDIAN OPPORTUNITY

INDIAN TRIBES as DEVELOPING NATIONS

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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A QUESTION OF POWER:

INDIAN CONTROL OF INDIAN RESOURCE DEVELOPMENT

A report from training sessions held at the Johnson Foundation's Wingspread Conference Center in Racine, Wisconsin, September 21, 22, and 23, 1975, for tribal decision-makers from the Great Lakes Area.

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A QUESTION OF POWER:

INDIAN CONTROL OF INDIAN RESOURCE DEVELOPMENT

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AIO Report

A QUESTION OF POWER:

INDIAN CONTROL OF INDIAN RESOURCE DEVELOPMENT[1]

"A great many American Indian tribes own extremely valuable natural resources--water, timber, and minerals. The trouble is that government policy has encouraged the use and development of these resources by non-Indians, and has simultaneously encouraged tribal members to move to the cities for outside employment. The result is that our reservations have the highest unemployment and the lowest family income of any ethnic group of Americans.

Native Americans can realize more from their resources than just a lease payment. They can also choose development alternatives which avoid the presently threatened destruction of their culture and environment. That's why we are here. The challenge before us is to discuss and decide how Indian tribes can conserve and develop their own resources at their pace and in a manner which is economically, culturally, and environmentally sound."

LaDonna Harris, President
Americans for Indian Opportunity

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[1]These sessions were held at the Wingspread Conference Center, Racine, Wisconsin, September 21, 22, and 23, co-sponsored by Americans for Indian Opportunity and the Johnson Foundation, partially funded by the Department of Commerce Economic Development Administration. Attendees were tribal decision-makers from tribes in the Great Lakes area. The Racine sessions were preceded by two earlier conferences, a National Conference on Indian Resource Development, held in Reston, Virginia on September 16, 17, and 18, 1974 and a Regional Conference held in Billings, Montana on January 30, 31, and February 1, 1975.

PART I: INTRODUCTION

In a society where land ownership has traditionally been synonymous with wealth, the group which holds the largest blocks of private owned land are the poorest, American Indians. Why?

From the beginning of the European migration to this continent the control of the development of land and its natural resources quickly passed from the native nations to a series of outside governments. Even after the establishment of the United States government and the subsequent recognition of Indian nations as sovereign dependent nations under a special trust relationship, Indian nations have been under the domination of outside control. Development has been permitted only at the discretion - and often, the whims of - federal officials. The attitude most often reflected by the Federal Government has been that of a dictator, sometimes benevolent, with a series of social welfare programs designed first to isolate and then to assimilate Native peoples.

It is clear that many of the problems of Indian nations parallel problems of under developed nations throughout the world. Just as many developing foreign nations are taking control of the development of their own resources, Indian nations are beginning to take control of the development of their own resources. By looking to the examples of foreign developing nations, we can learn from their experiences and perhaps avoid their mistakes.

This Conference is one of a series designed to explore the options available to tribes as owners of valuable natural resources; consider ways to make existing government programs work for the tribes, recommend changes to existing policies where necessary, learn how to deal with developers and explore new sources of capital, examine structures for internal decision-making, etc.

PART II: PRESENTATION OF PROBLEMS

> "Federal Indian Policy is much like Columbus. He didn't know where he was going. When he got there he didn't know where he was. And when he got back he didn't know where he had been."
>
> -Anonymous

The first session was given over to presenations by tribal representatives who reported on their development efforts and on problems they had experienced. Generally, the tribal leaders related problems with various government agencies which either hindered or prevented them from controlling the development of their own resources. The most consistent note that ran through the discussion was that tribes have learned through experience that dollars are more likely to come through the art of grantsmanship (learning what granting agencies are funding) rather than in developing new innovative programs and long range planning to meet the particular needs of their community.

For instance, a few years ago, industrial parks were heralded by several government agencies as the answer to economic development on reservations. As is common, the responsiblity for making Indian programs work was spread over more than one agency. In this case, the Department of Commerce Economic Development Administration was responsible for building the parks and the Department of Interior, Bureau of Indian Affairs was generally responsible for attracting industry to them.

According to a report to the Congress by the Comptroller General of the United States entitled, "Improving Federally Assisted Business Development of Indian Reservations" dated June 27, 1975:

> "To induce businesses to locate on Indian reservations, EDA spent about $16 million from 1966 through 1973 to provide industrial parks on 33 reservations. According to EDA statistics, at May 30, 1973 the average occupancy rate of the 26 completed parks was about 17 percent of the total improved acreage. The rate ranged from no occupancy, 5 parks had no tenants, and 11 parks had only 1 tenant."

The Report, which discusses the effectiveness of the federal efforts to improve economic conditions on Indian reservations by four agencies, Department of Agriculture, Commerce, Interior and the Small Business Administration, concludes that a lack of coordination between the various agencies is a major stumbling block to development on Indian reservations. Though it does not specifically say so, the implications are that the agency efforts deal almost exclusively with non-Indian developers.

In fairness to the agencies involved, it should be noted that the building of industrial parks is a standard practice for attracting industry to states and cities. As is true in many other areas, what is good and acceptable in a non-Indian community is not necessarily good for Indians.

Experiences reported by tribal members indicated the following problems:

1. The policy of the federal government itself (or its lack of a consistent or coordinated policy) has tended to prevent Indian tribes from controlling the development of their own resources.

    a. Government programs are not coordinated to work together. Each agency touts its own programs to those tribes it wants to fund or pushes those that seem "too hard" or have no appeal to other agencies. For example, one tribe reported that they had been told that the Economic Development Administration would not fund a farming project because it was the Agriculture Department's job; Agriculture would not fund it because they considered tribal operations as corporate operations; Bureau of Indian Affairs would not fund it because they said the Economic Development Administration was supposed to fund that kind of project and the tribe couldn't get a loan from the bank because they couldn't use the land as collateral.

    b. Feasibility studies are either inadequate or nonexistent. If an agency wants to fund a project and the feasibility report shows it to be impractical, it may fund it anyway, then the tribe is blamed for its failure. Specific examples were cited by tribes; Comptroller General's report cited above also gives specific examples.

c. Money from government programs does not come in on time. Time lags between funding cycles often cause cash flow problems. Starting date for a program may be long before funds are received yet tribes are expected to report work done from the starting date.

2. Efforts of the Federal agencies dealing with economic development have focused on non-Indian developers whether it be industrial development or development of natural resources such as land, timber, or minerals.

3. Proper information upon which to base reasonable decisions has been unavailable; that is, even basic inventories of their own natural resources are not available to the tribes in most cases.

4. Millions of dollars have been poured into programs designed to fail. (Examples are documented in the Comptroller General's report cited above.)

5. Regional and Area offices act as stumbling blocks rather than as facilitators for Indian programs. Tribes are reluctant to report troubles because of the threat, real or implied, of termination of funding. Further, policies are not consistent from region to region.

6. There is a lack of expertise in resources development in the Bureau of Indian Affairs.

7. There is a lack of capital for starting programs from both federal and non-federal sources.

8. Legal advice and technical expertise from experts that tribes can trust is needed to provide information for proper decision-making. Bad past experiences have made tribes very hesitant to try anything different, even when old systems do not work well.

PART III - TRIBAL RESOURCE DEVELOPMENT: WHAT IT MEANS TO THE BUREAU OF INDIAN AFFAIRS

The Honorable Morris Thompson, Commissioner of the Bureau of Indian Affairs addressed the group on the Bureau of Indian Affair's view of Indian Resource Development. The following is a summary of points covered and questions raised.

Basic Bureau precepts are:

1. A tribe must want development.

2. Tribes must plan precisely and understand the types of development they want to undertake.

3. And the Bureau must minimize its deterrents.

The Commisioner pointed out that many changes in ideas about resource development on Indian reservations are coming about. Whenever change is created, both anxiety and hope are created. Such is the case in the Indian community and in the Bureau of Indian Affairs. As tribes develop an increasing awareness of the alternatives for development of their resources and a growing sophistication in understanding the trust responsibility, the federal government is challenged to change its responses. As tribes explore the meaning and ramifications of self-determination, the federal government is called to account for its past actions and is forced to gear up to meet an expanded view of its responsibility as a trustee, a responsibility not only to protect tribal resources but to insure that they are managed prudently and in such a way that the tribes receive maximum benefits. For example, while some tribes are handling their own negotiations with outside developers, the other tribes are suing the federal government for previous actions which are now recognized as harmful to their interests taken under waivers of regulations.[1]

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[1]A case in point, while the Navajo are attempting to get a tribally negotiated contract for development of their uranium approved which would require a waiver of the regulation requiring competitive bidding, the Northern Cheyenne are attempting to void leases for coal development partially because the leases violated the government's own regulations.

The Commissioner pointed out that problems in tribal resource development include:

1. A lack of expertise within the Indian community and a distrust of the government expertise available makes it necessary to use outside advisers who are dependable and independent of both the Bureau of Indian Affairs and of industry.

2. A lack of stability in tribal governments which may be real or may be perceived by potential developers causes reluctance on their part to invest in development on Indian reservations. Tribes must re-examine their own structures considering such questions as continuity, terms of office, personnel policies, business structures protected from political interference, etc.

3. A lack of trained Indian personnel to run tribal enterprises from the technician through management levels. Educational programs, vocational and professional, must be re-examined to insure that the kind of expertise needed by tribes will be available and Indians must be enticed to secure those kinds of skills.

4. A lack of front-end dollars to provide expertise in planning and development. Traditionally the Bureau's budget has been expected to provide that money; it has not been able to. Other agencies such as the Bureau of Land Management, the Bureau of Mines and the Office of Geological Survey must be called upon for dollars and expertise. The possibilities of obtaining grants and loans against profits from industry must be explored.

5. A conflict of interest within the Department of Justice with attorneys in the same office representing Indians suing the government and the government itself.[1]

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[1]The Commissioner reported that legislation now pending which would create a Trust Council authority which would hopefully solve some of the conflict of interest problems within the Justice Department seems to be stalled because of disagreements between the Justice and Interior Departments and by a lack of strong support from the Indian community.

Participants added the following problems:

1. A lack of expertise within the Bureau in dealing with new forms of development; that is, if a tribe proposes anything outside the scope of the standard lease agreement, there is no one who can deal with it. Consequently, the burden of selling a new idea is always on the tribe which often lacks the experience, expertise and the dollars to fight the bureaucracy of agency, area and national offices. Since the likelihood of having the expertise needed is less at the lower levels, agency and area offices often act as stumbling blocks either out of fear of change or out of the lack of knowledge.

2. A conflict of interest within the Department of Interior which pits the trust responsibility to Indians against the other agencies within the Department with missions for development which conflict with the best interests of Indians.

3. A lack of basic information about tribally owned resources. Most tribes lack any real resource inventories. At the same time, outside developers seem to have access to tribes or from technological means not available to tribes such as data collected by satellite or more conventional aerial photography.

4. A lack of coordination between government agencies with responsibilities for assisting tribes with econonic development.

5. Processing time through government agencies.

The Commissioner expressed his belief that the implementation of the Indian Self Determination Act (P.L. 93-638) and the Indian Finance Act (P.L. 92-263) would allow significant steps toward Indian control of resource development. The Indian Self Determination Act allows tribes or tribal organizations to contract to deliver services themselves which are presently delivered by the Bureau of Indian Affairs including social services, economic development and educational programs. In addition, it authorizes grants which may be used for pre-planning prior to contracting for a government program, improving the infrastructure of a tribe or planning tribal programs, and money for technical assistance. No money has been appropriated though a supplemental appropriation has been requested which includes twenty-five million for planning and four million for technical assistance.[1]

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[1]The education provisions in P.L. 93-638 are not covered here.

The Commissioner was questioned specifically about:

1. The timber management fee collected by the Bureau and other aspects of timber development. This will be discussed in further detail in the section of this report dealing with timber development.

2. The availability of aerial photographs of reservations. He indicated that aerial photographs of all reservations were available and could be secured by tribes on their requests to the Bureau.

3. The availability of resource inventories of reservations. He indicated that few have been completed, others are underway, and more will be completed as money is available.

4. Whether the same cash flow problem associated with other government programs would effect contracting under the Self Determination Act. He stated that Area Directors have the authority to advance up to one-fourth of the amount of the contract so that cash flow should not be a problem.

5. The possibility of resistance to contracting by Bureau personnel. He stated that under the Self Determination Act, the Bureau is required to contract unless they prove the tribe is incapable of administering a contract and, in that case, they must provide technical assistance to develop the tribal capability to contract. Time limits are also built into the regulations, though the Commissioner was unable to say what the penalty would be for failure to meet deadlines.

PART IV: PARALLELS WITH DEVELOPING FOREIGN NATIONS

"About a year and a half ago, when LaDonna and others from AIO came to the Overseas Development Council to talk about the relationship between the actions of raw materials exporting countries in Africa, Asia, and South America, and Indian nations, it was very clear to all of us that there were certain parallels between events in those nations and the problems facing Native Americans," began Guy Erb, Senior Fellow, Overseas Development Council. "We have received confirmation of the existance of such parallels from a Civil Rights Commission report entitled, 'The Navajo Nation, An American Colony.' The Navajo Nation has more in common with an underdeveloped country than it does with the rest of the United States."

Developing countries have been largely dependent on major industrial countries such as the United States, Britain and France for development of their resources just as Indian nations have been dependent on the Bureau of Indian Affairs and other government agencies. That is, they have been in a position of responding to the needs of the industrialized nations in order to try to meet the needs of their own people rather than being in a position to decide what the needs of their own people are and the ways they are willing to respond to outsider's needs in order to satisfy their own. They obviously want to change that just as Native Americans do. Many are beginning to recognize that money or "aid" will not help much if the total relationship of rich countries stays the same. Changes in developing countries came about largely as a result of the internal pressures from the people themselves. The people decided that they were no longer going to tolerate outsiders saying, "Here's what we want you to do" and began to say, "No. We want to set our own priorities, then we'll come to you."

Erb pointed out that change does not come easily and there are many problems to overcome. Change begins with building up local decision making structures which, in turn, contribute to creation of a new political force. Fatalism within your own community must be overcome and stereotypes must be broken. Technology and technical expertise must be acquired. Marketing difficulties must be overcome.

Interestingly, it was Congressional impatience with the obstacles caused by the Agency for International Development officials that led to the creation of a new - and most promising - institution to assist Latin America called the Inter-American Foundation. The Congress felt that United States aid was not reaching the poor people in the countries to which they were providing aid. Dams and factories were being built but the poor people were not being helped. The Congress short-circuited the complex of institutions and created a relatively unbureaucratic, almost anti-bureaucratic, institution with the specific objective to contribute to social change.

"Where have you seen, I'd be curious to know," said Erb, "a project for Native Americans that says 'This project truly breaks from traditional approaches by placing the decision making in the hands of the people to benefit from the project.' That's a specific objective of a cooperative in Bolivia. The jurisdiction for the project is its wide membership, and general participation in decision making. It reallocates ownership and decision making, and shows that the means of achieving real social, economic, and political development is for the people to get involved in the project. This is quite an unusual approach to a development project, but one that was insisted upon by the Congress.

Here's another one which stresses leadership, land distribution, diversification, and creative cooperation between normally competitive groups. In other words, an attempt was made to forge unity among a variety of otherwise competing peoples. I have other examples here in small scale projects which have been set up to fabricate bricks, in woodcrafts, woodworking, and rural development.

Each one of these small scale projects aims to maximize the employment of the people affected. They minimize capital intensive machinery because they want to employ as many people as they can. They attempt to utilize what credit is available directly for the benefit of the people in the project or to be affected by the project. They try to use local sources of raw materials and incorporate the technical advice that is appropriate for that level of project. There is a whole school of thought on what levels of technology are appropriate for community development. It's very interesting that they are not using large machinery in most cases, but rather machinery that is cheap and easily accessible. But above all as the people develop skills in managerial techniques, they become interested in the decisions, in where the power resides, and in who is going to control new projects. The power then tends to shift to those communities that are affected by the money that's being disbursed.

As I listened yesterday, I was thinking that it took some years for the Congress to react as it did and create this Foundation which would allow communities to get relatively small grants quickly, but not necessarily on the basis of sophisticated project requests. I've been told by Inter-American Foundation staff that they sometimes receive handwritten project requests. They will accept them because if many in a community come together to change their situation, the form in which they reach the Foundation is less important than the decision to take action. When I listened to you and to the Commissioner, it seemed that we are still a long way from getting that kind of innovative institution that you could rely on as you try to formulate projects for your communities."

PART V: PLANNING - CONSIDERING TRADEOFFS

"It is not good enough to do our best.
We have to do what is necessary."

Winston Churchill
Prime Minister of Great Britain
World War II

The key to developing your own resources, whether they be industrial or business endeavors or natural resources is creating an environment for success according to David Lester, President of the United Indian Development Association.

In order to create such an environment, there are certain factors that must be considered:

1. The primary ingredient necessary to gaining control of resource utilization and development is the determination to do it.

2. Economic development is not education, health, housing, manpower training, etc, though all of these are related.

3. Economic development is not just creating jobs. Many programs have been devised and millions of dollars have been spent to create jobs for Indians. Creating jobs for Indians does not change the economic relationship between Indians and society. "During the period when there was slavery remember there weren't any unemployed Blacks. Slavery is the only system that guarantees 100% employment," Lester said.

4. Economic development is production of wealth for owners. Indian economic development is Indian ownership of the economic activities taking place in the Indian community The classic approach is to take outside capital, outside technology, outside management and concentrate them in an area for profit. This is not acceptable in the Indian community because the process ceases to be developmental and commences to be exploitive in nature.

5. Successful Indian projects are those that come from within the community itself. The history, tradition, and experience of the tribe must be considered. It takes more than a training program to prepare a community's social fabric to accept what hasn't been done before. One of the reasons for the failure of so many industrial park projects is that they are basically geared to manufacturing enterprises. For many Indians and Indian communities, manufacturing is not within their experience; as a result most manufacturing efforts have not only failed, they have been disruptive to the community.

6. Do not be pressured into taking the first opportunity that comes along. There are many opportunities. The key is to find the one you can succeed with. Limitations as well as potential must be considered so that the opportunity chosen will fit.

"Once there is an environment for success and a truly feasible project identified," Lester said, "then it's possible to establish an enterprise that can develop and prosper." At this point management factors must be considered. Some of these are:

1. Any business that is run like a governmental agency is doomed to failure, whether it's tribal or federal. The Post Office is a prime example. This is not a criticism of tribal governments - they are not businesses, they are governments and should operate as governments. Neither can businesses be run like federally or state funded programs or foundation programs. <u>The local community must devise its own method for insulating their business enterprises from the political process</u>.

2. The essence of a successful business is that the owner - the managers - are committed to the success of the business. Run it yourself. Hire the expertise needed to help you. From the commitment to succeed comes the courage to make unpopular decisions.

3. A business is successful when its revenues exceed its expenses. However, the profits must be reinvested in replacing or adding needed equipment otherwise the business will be cannibalized just as it will be by hiring people who are not needed or misusing income.

"In Southern California for example," Lester said, "in one county (San Diego County) there are 17 Indian reservations. Three years ago, one small reservation in San Diego County came to us and wanted us to help them with an economic development program. What they wanted us to do was to come in and do the economic planning, produce for them an enterprise, arrange the financing through government or private sources, set up the management structure and to put them into business. Well, we told them we couldn't do that. We told them though, about the major decisions that they would have to make if they were serious. The things that I have outlined here were basically what we told them. Then the final thing that we asked was that they have one individual in charge. A person who could make decisions. Then what we had to offer could be effectively used. Then as consultants we could talk about the best approach towards accomplishing their goal, but we couldn't set the goal and we couldn't tell them how to organize and achieve consensus to pursue the project.

Well, they were talking about a modular home factory; they were talking about a brick factory--using some of the adobe that they had on the reservation; they were talking about mining gravel, and a lot of other things. Well, you know what they finally came back to us with? Every one of those guys on the reservation had lived there working in agriculture-related jobs. When they got down to saying what they really wanted to do, they wanted to be farmers. They were tired of working on everybody else's ranches and farms, planting all of the orange groves and stacking somebody else's hay; the problems that they faced to get into agriculture to them were insurmountable. It was easier to go get a grant and a loan to build a brick factory than it was to develop land for agriculture. So they almost sold themselves into going and doing the brick thing. But then when they started really talking to individual people who would have to work, nobody wanted to work in a brick factory. If they would have taken that approach, they would have had the same problem that they have had on other reservation projects where they've said, 'Well, the Indians can't adjust to a work routine.' Well, that's not true because they are already adjusted to a work routine which is far more strenuous than being a factory worker. You have to get up earlier, you have to work longer and you get home later, so it's not the work routine at all. I don't care what the sociologists say about it--I've seen it happen. In other words, what they finally chose to do even though there were more legal and financial difficulties to accomplish it, was to do something that would make more sense for the community.

There wasn't a piece of land on the reservation that was good farm land that didn't have four or five people owning it. But now they had identified the problems that they had to overcome and they went about overcoming the obstacles. All around them were big avocado, citrus, corn fields, and alfalfa and their neighbors had the same type of land, the same rains, the same sunshine but the Indian neighbors were producing and the non-Indians were still growing weeds.

This week they're harvesting their first crop of corn. They put together one hundred acres. It took eighty-five signatures to put one hundred acres together. You know something? They did it because the whole community wanted it done.

They didn't have any money, so to clear the land they all went out and cleared it. The tribe had a Comprehensive Employment Training Act (CETA) program so all the CETA workers were out there clearing the land; tearing down old fences, consolidating the land and doing a little bit of grading. Now they had another problem and that was getting money. Banks will not loan any money to a tribe on trust land. Everybody knows that. Well, that's not true either because we obtained a loan through a bank. You might ask, 'What did they use for security?' Well, they used their crop as security. We put together a business plan where we were able to demonstrate that the Indians on the reservation had the ability to raise a crop They didn't need to use their land as security because corn as a crop is security--a commodity. They went out and they contacted the local dairymen, and they contracted their crop before it was even grown. So they took their business plan, the costs that they anticipated to have, and the contract for the crop to the bank, and the bank made them a seventeen thousand dollar loan to buy seed and fertilizer. The crop was the security. Finding money to finance an economic development project is difficult, I know. We've been involved in financing several hundred Indian business projects both on reservations and off reservations, and it is difficult, but if you have a good project and can show that there's going to be money to repay the loan, then you can get the loan. That's the key. Now I know that some places have bankers who are absolutely prejudiced and won't make the loan regardless. We've run into those too. That is where the attitude of not accepting failure comes into play, because you will find that there are more ways than one to skin a cat. If you try it one way and it doesn't work, you can sit down and figure out another way to do it. Now, of course, there is the American Indian National Bank that is more than willing to look at Indian businesses purely from the business point of view and there is also the Indian Finance Act.

I know it's a battle but it is possible to find financing. The biggest key is establishing a plan and demonstrating that it will make money. The fact that brought the tribe together was that they all saw that it was in their best interests, both as a community and as individuals to get into agriculture. Jobs are not the thing that they were after, but they knew that if it was successful and if they continued to develop more and more land on the reservation that more and more jobs would be created. Everybody on the reservation had a stake in what was going to happen, and that's why I think it's going to be successful. The decisions and operations are under the control of the people who have a vested interest in the success of the project. I have used this as an example to show you some of the things that I think will lead to failure and some of the things that while they won't guarantee success, give you a chance at it.

PART VI: TRIBAL POWER AND STRUCTURE

The extent of tribal power has yet to be defined according to attorneys Charles Lohah and Leigh Price.

There is very little "Indian law", that is, interpretation of the laws of the United States applied to Indian rights. Most issues have not been decided by any court, and only a very few issues have been decided by the Supreme Court. Even after decisions are made, the Congress may pass new laws which modify or make them meaningless, or the Court's order may not be enforced. It is difficult to separate a right from an enforceable right. There is no way to know the extent of Tribal power until it is exercised.

Most people view lawyers and "the law" with a kind of awe that inhibits the kind of questioning necessary to explore a legal question thoroughly. There are few lawyers trained in "Indian law" and even fewer Indian lawyers.[1] Participants were cautioned to select their legal counsels carefully and to exercise control over them as they would any other employee. "The attorney's role is to advise you how to do what you decide needs doing. You have the responsibility your hands," Price said.

Tribal structure has been greatly influenced by non-Indians for the convenience of Federal administrators and supervisors. Only in the last decade, for example, have the "Five Civilized Tribes" in Oklahoma been permitted to elect their own Chairmen. Until then, they were appointed by the Secretary of Interior. Tribes must have their tribal constitutions approved by the Secretary of Interior. If they fall outside the normal limits of the reviewer's experience, they are often rejected. Some tribal governments were actually imposed by legislation. For example, "I'm from the Osage tribe in Oklahoma," said Lohah, "our so-called tribal government was established and is presently maintained by Federal statute. Congress said, here's your tribal government! At the time (1906) we had large and undeveloped areas of coal and oil. The statute was totally intended for our exploitation--I won't dignify it by calling it development.

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[1]The number of Indian lawyers has increased dramatically during the last five years largely due to the efforts of the American Indian Law Center at the University of New Mexico. However, there are not nearly enough Indian lawyers.

Times changed. We have a per capita distribution system which made everybody happy during the oil boom of the twenties. No one worried about our tribal government system until it became unworkable as a tribal governement.

We've tried to alter its structure. Very simply, what we tried to do was split the business functions from the tribal governmental functions and make what is now the "Minerals Exploitation Council" into a subsidiary of a tribal council. It seemed very rational to us, but since it was established by a Congressional enactment, it had to go to Congress to get approval. It writhed around in the committee rooms and died like a dog on the floor. So we still have a "tribal" government that acts like a wholly owned subsidiary of the Exxon Oil Company."

Tribes must re-examine their own structutes to be sure they meet the needs of their own people. In doing so, they must take into consideration not only the problems of internal governance, they must build safeguards against external interference. Tribal constitutions may be inadequate or outdated and in need of revision. Some may simply need to be enforced. Selective enforcement, particularly by Federal officials, is a well recognized method of manipulation. A strong, well planned tribal structure is imperative as questions of jurisdiction come increasingly to the forefront.

Jurisdiction is perhaps the most crucial issue facing Indian nations today--who has the jurisdiction--the power: over what, over whom, and where.

One of the most disturbing pieces of legislation passed during the "termination era" of the Eisenhower administration was the Indian Law Enforcement Improvement Act (P.L. 280), which was designed to give states jurisdiction over local tribal governments and this assimilate Indians totally into the non-Indian governmental structure.[1] Some states have been hesitant to assume jurisdiction over reservations because of the expenses involved for police salaries, welfare, etc., which would not be supported by taxes from the reservations. Some states have now decided that there is a lot of money to be made through taxation on Indian reservations. Since 1968, however, states have been unable to assume jurisdiction over tribes without the agreement of the tribe. Some states, (Montana and New Mexico, for instance) have worked out what they hope will be a loophole.

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[1]Legislation has been introduced in the Congress which would reverse some of the effects of P.L. 280.

They are arguing that jurisdiction amounts to the right of self-government - i.e., that Indian tribes have jurisdiction over Indians (self-government) but not over non-Indians on the reservations. "They figure that the non-Indians have the cash and if they can tax Peabody Coal or Westmoreland, they've got most of the money anyway," Price said.[1] "There are two problems with this. One is that they are trying to create a theory of jurisdiction based on race. Traditionally, the sovereign has jurisdiction of power, it has the power over everyone within the boundaries of the jurisdiction. For instance, if you are a citizen of Wisconsin and you drive into Michigan, you have to obey the traffic laws of Michigan. Michigan has power over the driver of anybody in the state, not just the citizens of Michigan. But states such as New Mexico are arguing that the tribes have authority only over tribal members, not over everybody on the reservation. They're hoping that the Supreme Court will give its blessing to a new form of racially-based sovereignty - and they may win.

Next to this question is the question of civil and criminal jurisdiction over non-Indians within the reservation. Can the tribal police arrest a non-Indian for speeding on the reservation, try him in tribal court and throw him in tribal jail? I don't know. I don't know because the Supreme Court hasn't decided yet.

What I do know is that before the Supreme Court decides the question, some tribe must pass the law, and if it's violated, enforce it. That tribe must act like a sovereign or we'll never know what the law is."

"If you ask what the law is today," Price continued, "A lawyer may tell you that in the Nineteenth Century, a territorial court in Arkansas found that the Choctaw had no power to exercise criminal jurisdiction over non-Indians. He might tell you that a young Indian attorney, Frank Ducheneaux, Jr., writing an article for the NCIO Newsletter during the Nixon administration, argued that it was well established in the law that Indian tribes have no criminal jurisdiction over non-Indians.

If you accept these lawyers at face value, you would stop there. But the Solicitor has since reversed himself under pressure and today some tribes have asserted this jurisdiction over non-Indians. We're now waiting on the Supreme Court.

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[1]The State of New Mexico is taxing the developers of Navajo coal $1.25 a ton - the Navajos are receiving 40¢ a ton for the same coal.

For decades, Solicitors, lawyers and from time to time even Indian attorneys accepted each other's opinions of the law as if that were the law and as if the law were cut and dry. They all said that, "under the law," the tribes did not have the power.

My point is, to find out what your powers are as a tribe, you must first listen to lawyers skeptically, you must then decide what you want to do, you must be prepared to take risks and to lose, you must keep your lawyers and advisors on a very short leash and never forget that you pay their paychecks, that they work for you--not vice versa,--you must insist that they help in your evaluation of risks, and finally you must be prepared to behave as a sovereign. They won't give it to you.

I think that Indian tribes can, in the framework of white man's law, become true states, with the power to tax or to offer tax advantages the states aren't prepared to offer, to control the behavior of non-Indian individuals and corporations who come on to reservation lands, actually function as tribally-controlled states, at least as powerful as the other, non-Indian states.

This is the opportunity that should never be given away cheaply. It must be approached wisely, but there's no need to give it away. To get those cases past the courts and the Congress, you must act like a sovereign. You must take the initiative."

Lohah spoke of the difficulties of finding your way through the massive accumulations of legislation, court cases, published and unpublished Solicitor's opinions, etc., that deal with questions of Indian law. This makes it very difficult and time consuming to do the research on each and every case. "Legal people say that all the treaties and laws are compiled in Kappler's five volume set on Indian law. However, that set died in 1938. If you are going to get up to date with the laws, you have to go through every volume of the Statutues at Large after that. Then you have to check Solicitor's opinions, both published and unpublished. We go around the country with little black bags loaded with 25 USC and 25 CFR like old time doctors with their little medicine kits in about 1880. We're asked questions that just can't be dealt with off-hand. It's sometimes like those old doctors running into a case of smallpox--you just sit there and watch the patient die," Lohah said.[1]

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[1]The Native American Rights Fund has established a National Indian Law Library in an attempt to alleviate this problem. The American Indian Policy Review Commission has one task force charged with the responsibility for codifying Indian Law.

While participants were encouraged to exercise their tribal power, they were cautioned to remember that it must be used wisely and that its effects could be far reaching. "There's one horrible case out West," Lohah said, "where a lawyer right out of law school made a tribal sovereignty case out of a parking ticket or something equally foolish to make a federal case out of and bombed out completely--got a decision that said there was no such thing as tribal sovereignty. Some legal service group got into it before it was too late, but you've got to be careful. It's very easy for rights built up on Indian case law to be destroyed by a bad case."

Participants discussed the need for some kind of coordinated efforts on major issues such as water rights and taxation. "It seems to me," one participant observed, "that we should get tribes who are interested in, say, the taxation questions, to hire one law firm to handle that issue for all of them. The way it is now, each attorney wants to hold that little tribe under his thumb all the time so that he handles all the legal aspects. He doesn't want to go and split the pie with other attorneys, which is one of the things that's holding back some of the major decisions in Indian country."

Participants were encouraged to develop their tribal codes as thoroughly and comprehensively as possible. Jurisdiction can be lost by default--simply by not exercising it. The Environmental Protection Agency, for instance, has established a regulation for air quality control with a provision for tribes in 280 states to set their own standards. If tribes don't move quickly, however, surrounding states may establish air quality standards for the surrounding areas which could make tribal codes ineffective.

"Today, Indian tribes are at a point of opportunity. I think there's going to be a tremendous change in Indian country in the next generation and by the time your grandkids are running the tribal government, we will be in the 21st Century. I can envision Indian tribes which are not only economically self-sufficient but also independently and culturally Indian. I don't see economic development as an Anglo-Saxon perogative. I think that the Anglos in this country who say, "But, the Indians can't live in teepees forever, can they?" have an almost childish perspective on cultural development. To turn it around: When Europe was in the Dark Ages, ready to explode culturally into the Renaissance, Marco Polo wandered in China and found a culture far more advanced than his own. But it wasn't necessary for the Europeans to assimilate into Chinese culture in order to develop. It was possible for them to grow and develop as Europeans, not as Chinese; and in the same sense it's possible to grow and develop as Indians, not as Europeans. I know there are problems in trying to find an Indian way to develop economically without becoming a white man, but I say it's there to be done, and it's possible.

That's the opportunity, and in terms of tribal power it means building towards tribal governments that, in the Twenty-first Century, run by your grandchildren, have the clout to stand up as sovereigns equivalent to states," Price concluded.

PART VII: DEALING WITH DEVELOPERS

"I have advised many developing countries on natural resource agreements. The Indian leases in this country are among the worst that I have seen; they can only be compared to the old colonial agreements of thirty and more years ago," began Charles Lipton, an international attorney and negotiator.[1]

"The Tribes have been pretty well taken," he said. "One Tribe, for example, entered into a coal lease where all they get is a fixed royalty of 17½¢ per ton, without any relationship to what kind of coal it is -- how high grade, or how low the sulphur content -- and more importantly, without any relationship to the value of coal. When coal prices go up, the Tribe won't get anything more; the lessee gets it all. And we all know what has happened to the value, the purchasing power, of the dollar in the last few years." Lipton pointed out that 17½¢ will buy only half an ice cream cone today. "What will it buy in five years time?" he asked.

"And the story is even worse than that and not far back in history either. In May of 1971, the Tribe entered into a lease agreement after advertising and presumably competitive bidding, with a Billings lawyer -- a speculator. Just six months later, he assigned the lease to Chevron. For that assignment, he received $1,380,749.50. The Tribe did not receive one penny. In addition, that Billings lawyer and his descendents will receive a 9¢ per ton royalty, more than half the royalty the Tribe gets for each ton of coal mined."

Lipton cautioned the participants, as Price had earlier, to be wary of their advisers. He said that he had a phone call a few months back from a Tribal Chairman in South Dakota who had heard him speak once before. The Chairman just wanted a reaction to a proposition. A fast dollar artist was going to help the Tribe lease their land to petroleum companies -- and he was going to be damned reasonable about it; he wasn't even going to charge them for his time. All he wanted was 2% of the royalty. That is to say, if the royalty was 12½%, he would get 2% and the tribe would get the remaining 10½%.

"I told him that it was just about the worst thing the Tribe could do. After all, that character wanted 1/5 of what the Tribe would get. It could be many millions of dollars," Lipton said.

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[1]Lipton has advised 22 governments overseas on the negotiation and drafting of natural resource agreements, legislation and regulations and is a consultant to the World Bank and to the United Nations.

"There are many lawyers and advisers around -- some of whom are experienced and quite prepared to give their time and advice for a fee on a time basis. Don't give up any interest in anything to anybody," he said. "That's been the trouble. the Indians get a few cents and the big companies, the speculators and the rip-off artists get all of the profits."

"Deciding what the Tribe wants to do and resolving to do it is the most important step in controlling resource development. You may be told that the law or the regulations won't allow this or that. The object of the exercise is to decide what you want and figure out a way to do it. There are not only more ways than one to skin a cat -- there's more than one cat to skin," Lipton said.

The approach should be positive, not negative. For instance, if the Bureau of Indian Affairs regulations require that a Tribe advertise for competitive bids on a lease form (or ask for an exemption) it need not be the Federal lease form. You should be able to draw up your own lease form, provided that it meets the minimum requirements of the Federal Regulation. Those are supposed to be minimum provisions to protect the Tribes, not maximum provisions to exploit them. In any event, Lipton maintained that a lease is not the most advantageous form of agreement for a Tribe to use.

The Federal Lease Form

Lipton pointed out that the Federal lease form is a lessee's deal -- that is on balance the clauses favor the developers, rather than the owner. The Federal lease form has routinely been used for public lands and for Indian land under Federal trusteeship. "We must recognize," said Lipton, "that what is good for the Federal government on federally owned lands is not necessarily good for the Tribes on Indian owned lands."

Lipton went into the reasons for this. The Federal government is going to get its financial return not only from the lease itself but also from taxing the profits made by companies using the raw materials from the Federal lands. The Federal government also has some interest in subsidizing the needs of the country as a whole -- energy, for instance. Leasing coal owned by the public for 17½¢ per ton can also be rationalized on the basis that cheap energy is badly needed, that the companies developing coal deposits will pay taxes on their profits to the Federal government, and that jobs will be created and employees will pay taxes to the Federal government. Leasing Tribal coal cannot be rationalized that way. There can be no justification for some of the poorest people in the country subsidizing the needs of the rest of the country, much less the wealthy multinational corporations. Nor can the failure of the Tribes to get a fair share of the profits from their natural resources be justified either.

Worst of all, under the Federal lease form, the Tribes have no control over the development of their resources.

"Control means who makes the basic decisions regarding a project." Lipton said -- It is very important that before negotiations are undertaken, the basic decisions are identified and a determination is made as to who will make them. For instance, timber owners may determine what the annual cut will be, the reforestation cycle, the species of wood to be grown, etc. Mineral owners may determine how much mining there will be and where; at what rate; what factories are going to built, if any; where they are to be located, how and when the land will be restored, etc. They may decide to what extent the raw materials will be processed before it passes from their control. Timber may be cut; a saw may be established; a chipping plant; pulp and paper mill; a plywood plant; veneer plant; furniture factory. The more you upgrade, the more you add to the value, the more you add to the deal in terms of money, jobs and the "Multiplier Effect" - the creation of new local services, small business and feeder enterprises.

Owners may set conservation standards, environmental standards, training programs and employment and promotion quotas. Developing countries no longer settle for "employment preference" clauses. They set out schedules, for instance, that after five years 90% of the employees in each job category will be local people; in ten years 100% execept for certain specified jobs. They don't accept a clause that provides for employment of local people only "if qualified people are available". The developer must qualify them. There may be a requirement that for every ten outsiders, one local person will be sent to school; or for every five outsiders, one local person will be put in a training program. Owners may decide where housing projects will be built and how they will be built. "Many don't go this far yet," Lipton said, "But they will. That is what control is about."

"Many of the same American corporations who are dealing with Indian Tribes are giving better terms to the governments of foreign countries where they are further away from markets, where transportation costs are greater and above all, where their risks are greater," Lipton said. Tribes must come to the negotiation table knowing this and insist on better deals.

What are the forms of agreement that have been used by developing countries?[1]

Concession agreements. Concession agreements are one of the early forms of agreement. A concession agreement gave title, ownership of the resource, to the foreign investor and allowed

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[1] In speaking of developing countries, the words "government" and "owners" are used interchangably. All mineral rights are owned by the government in developing countries.

the foreign investor to come in with his own law or froze the local law so that it couldn't be changed. These concessions were justified on the basis that it was the investors of the mother country, the colonial administrative country, whose interests were to be protected, not the local people. They had no control over the development of their resources at all.

Lease agreements. Lease agreements were used before World War II. They usually provided for a fixed number of cents per ton for minerals or per acre of timber cleared. As the value of the raw material went up, the increased profits went to the lessees, and the owners got nothing more. As the value of the currency went down, or depreciated, the owners got less and less for giving up more and more. The local people remained the owners, but they had no control over the development of their resources, until later, with political independence, when they enacted their own legislation. The lease term was usually ninety-nine years, but really longer as the term ran until the mineral deposit was mined out. The lease form usually did not include meaningful provisions for the employment of local people, or for the development of local business - the Multiplier Effect. The Indian coal and petroleum leases of today are very much like those old lease agreements. Leasing is not development.

What are the forms of agreement that are now being used by developing countries?

1. Joint ventures. Joint ventures are agreements where the parties form a kind of partnership and agree on a sharing of the risks and the profits, and agree on how the basic decisions are going to be made. Lipton stressed that most developing countries now insist on structuring their resource agreements so that their financial return, sometimes called "the government take," comes in three ways:

   (a) they collect a royalty which is not fixed in cents per ton or trees cut; the royalty is a fixed percentage of the market value. This guarantees a cash flow, whether projects prove to be profitable or not, and insures that the payment is in proportion to the value and will increase if inflation raises the value of the resource.

   (b) they collect their own profits tax; and their auditors make that calculation.

   (c) they obtain a participation in the net profits.

Lipton explained why developing country officials like joint ventures. "They say, we want to eat out of the same pot the foreigners do. That's why we want a joint venture and want to share in the net profits. We know they've got good engineers; we know they've got good accountants; we know they've got many different ways of moving money around. The raw material is ours, and that's our contribution to the joint venture. The developers who are contributing capital know how to use their marketing ability. But the basic value is ours; we want to have a share of the profits from it."

Joint venture agreements are complex and you have to know what you are getting into. Lipton said "if you think you have been skinned before, when you go into joint ventures, the opportunities of getting skinned again are increased immeasurably if you don't watch what your partners are doing." Once a joint venture is entered into, as in any other partnership, you must be sure that partners act and continue to act properly. What is won at the negotiating table can be lost later on if you don't watch out for your own interests.

2. Production sharing agreements. The production sharing agreement is a variation of the joint venture. The owner's take is in-kind rather than in a percentage of profits, like a share cropping arrangement. The owners can then market their share themselves. This works well for certain resources like petroleum, timber, or gold; often to the advantage of the owners because you can't be sure that developers are selling to the best advantage. They may be selling at reduced rates to their own subsidiaries or to others who will reciprocate. This could make the profits lower and thus the owner's share lower.

3. Service contracts. The newest form of agreement is a service contract under which the owner hires a company to develop the raw materials for a fee. This is similar to employing a contractor to build a road or a building. The fee could be a percentage of the value of what's produced, a percentage of the profits, or a fixed amount of dollars. While the owner has complete control, the owner also bears the total risk, but gets all of the profits.

The Venezuelan government, for instance, hired an American mining company to mine an iron ore deposit, deliver the ore to a port and load it on a ship. They paid so many cents a ton for it. The Venezuelan government has hired a second company to market the iron ore for them, and they are paid a marketing fee.

The government of Iran has hired an American mining company, Anaconda, to mine a copper deposit for them for a fixed fee. Both are very large projects and in both cases, the owners -- the governments of Venezuela and Iran -- are bearing the total risk. You cannot expect 100% of the profit if you are not willing to take 100% of the risks -- but there are ways of minimizing those risks.

An example of a small scale service contract is the development of a kaolin deposit in Swaziland. (Kaolin is a kind of clay -- one kind is used for making dishes; another is used to coat paper with a slick finish. Swaziland is a small country in Southern Africa). The Swazi discovered that one foreigner was mining kaolin under a lease and had simply hired fifty or sixty Swazi to do the work and he was making the money. The Swazi decided not to renew his lease and to run the mining operation themselves. They hired an expert to tell them where to find the best grade of kaolin, hired a mine manager and took over the total operation.

What does an investor look for when he considers a deal?

1. Discounted cash flow rate of return. The calculation of a discounted cash flow rate of return (DCF) can be complicated, but basically it is a method to show how much money an investor will get out of the deal compared to how much money he must put into it over a period of time, based on the present value of a dollar. A dollar today is obviously worth more than a dollar a year from now. An investor will want to determine what he can reasonably expect over the life of a project expressed in terms of today's dollars. If he sees he can only expect a 6% or 8% DCF rate of return on his investment, he'll probably put his money in a savings bank or government bonds -- it's easier and safer. He decides on a minimum amount of return he'll settle for or he won't make an investment. To the extent that he can get more than that, a Tribe has not made its best deal. At this point, predictability and stability come into play.

2. Predictability and stability. A company which would in all likelihood invest in an operation in the United States with an expected DCF rate of return of 15% would never invest in the same operation with the same return in an unpredictable, unstable country. Indian reservations face the same kind of scrutiny. If a tribe is together and there's relatively little internal dissention, then an investor might settle for a smaller rate of return. On the other hand, if they throw their tribal chairman out every year, an investor will look for a higher rate of return because of the unpredictability. That means tribes will get less -- the price of uncertainty must be paid. "There is no free lunch" as Lipton stresses several times.

How can tribes know if they are making a good deal? Lipton said, "If you've got as much as you can and given as little as possible, then you've made a good deal. In order to negotiate with an investor, you've got to put yourself in his shoes, and to the extent possible, know what he knows, otherwise you are in a very poor bargaining position."

The feasibility report is a very important negotiating tool. It is a report prepared for the investor which sets out a complete plan for the organization of a project, how it is to be done and how it is to be financed. It also includes a projected DCF rate of return. It therefore contains the basic information on which a developer bases his decision to invest. Without it, a Tribe doesn't know what the real situation is. You are negotiating in the dark. You may not know the value of your coal or your timber, but you can be sure the investor knows. He knows it very well. He's done it many times in many different places. "Compared to you, they are standing in flood-lit rooms and you don't even have a flashlight," Lipton said.

It is very hard to get good feasibility reports. You can insist on seeing the developer's report and you must be sure it's the real one -- the one they show their Boards of Directors. You must have some method of verification and a sophisticated Tribe would make sure they got the right advice from experts to check it out.

What should a tribe look for when it considers a deal? Basically, the same things an investor does: what will the Tribe get out of it compared to what they put into it? The Tribe must consider both the negatives and the positives:

1. Cash revenues.

2. Jobs.

3. Training people in skills that can be used in other enterprises.

4. Service and feeder enterprises - How can the Multiplier Effect of an enterprise be increased? If it's a timber operation, can we start a plywood plant or a furniture factory? If it's a hotel, for instance, can we start supplying the meat to the hotel? Can we start our own grocery stores, service stations, etc. to keep the new dollars in the community? (According to a report prepared by the Secretarial Commission of the Department of Interior, on the Pine Ridge Reservation the average payroll dollar turns over less than once on the reservation. In a well-rounded, fully developed economy, the "original" dollar of the foundation industries characteristically turn over from five to seven times through local services. In a report prepared by the University of Oklahoma in the late sixties, economists found that on an average, for every seven new out of town students at the University, one new job was created in the service enterprises in the community. It would seem to follow that the creation of new jobs on the reservation should be followed by an increase in employment in service industries.)

5. Alternative uses for the resources - Strip mined land cannot be farmed or ranched.

6. Effect on other resources - A mining enterprise, for instance, will require water. Water is a resource with a price on it, too.

7. Environment - If it is a factory or industrial operation, there may be pollution. Your water and air may be polluted. Strip mining has devastating effects on the land unless properly controlled with tough restoration requirements.

8. The impact on the community - Will the enterprise bring in an influx of outsiders? If so, what about cultural disruption and the costs of outsiders such as schools?

Cost/Benefit Analysis

Cost-benefit analysis is a method of comparing the quantified costs of a project to its economic benefits.

There are costs to a government or an owner which may be indirect but which must be considered and evaluated against future benefits. Such costs include the value of water used in the project, alternative uses for land, the costs of road maintenance and providing schools and facilities for new workers. Then one has to consider the effect of inflation which seems to follow a large scale project unless controlled. Of course, one must take into account factors that are difficult to quantify, such as environmental damage, credit limitations and the impact of a large project on the traditional way of life of the local people. "For example," Lipton said, "in Switzerland, the government will not allow a coal deposit to be explored. It's under a game reserve. They say, 'It's very important to our people that game be here. We don't care how much money is going to come out of the land from a coal mine because a hundred years from now, that will all be gone. A hundred years from now, game is still going to be important to our people. We're going to keep this a game reserve.' When I say - let's find out what's under the land, maybe there's a billion dollars of coal there and we'll just move the game reserve, the government answers: 'No, we don't even want to know. We might be tempted.' That government has made a cost-benefit analysis and to them the cost is more that the benefits."

Negotiations

So far, there is a tremendous imbalance of information and experience between the developers and the Tribe's side of the negotiating table. There is usually nobody in a Tribe with commerical experience equivalent to that of an executive in a big corporation. On one side of the table, you may have the Vice-President of a corporation making $100,000 a year with his lawyer making $150,000 a year, who may have done this fifty times all over the world. On the Tribe's side, they've just never done it before. Developing countries now seek advice from outsiders and they have begun to train their own people. "The first time maybe they don't make such a good deal, but they learn, and the second time, they make a better one and the third time around, they know what to ask for and the experience to know how to get it," Lipton said. But the difficulty with the Tribes is that some just cannot afford to make mistakes, or all their resources could be leased out.

Information is power. Developing nations have begun to exchange information. In many respects that is what the producers associations are about -- the Organization of Petroleum Exporting Countries, the International Bauxite Association, the Iron Ore Producers Association.[1]

In many cases, information on the kinds of agreements negotiated by others can be learned through research. Outsiders with expertise may be hired out, but they should only be hired -- they get paid for their time and their experience but they should never get a piece of the action in the form of royalty payments or percentages of profits.

There are many, widely varied issues that come up in dealing with developers. Each project must be undertaken carefully and considered from every possible angle before, not after, an agreement is made. Expertise must be sought when necessary and used early. But the overriding considerations in every case must be control and a fair return to the Tribe. As Lipton put it, "In the last analyses, nobody really cares whether you get a good deal but you."

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[1]Indian nations have also begun to form producers associations. The Council on Energy Resource Tribes is a coalition of the tribes with producing or identified energy resources such as petroleum, coal, oil shale, and uranium.

DEALING WITH FINANCIAL INSTITUTIONS

"There are eight types of banks in this country and we are all in the business of buying and selling money for profit. If you substitute the word "value" for money, then you pick up every type of financial intermediary. Always remember that the key word is profit in our business just as it is in any business."

-Jack Rushing
Assistant Vice President
First City National Bank
of New York

"As Chairman of the Board of about ninety-five Native owned businesses in the United States and Canada, I will tell you that the main problem I see with any type of business development is that very, very few Native Americans -- in fact, very few Americans -- understand finance, the business of buying and selling. More importantly, of all the companies I have seen, only those companies who really understand the banking and financing function can reasonably expect to be successful," began Jack Rushing, Assistant Vice President, First National City Bank of New York.

In order to understand how to deal with financial institutions, it is important to understand who they are, what they are and how they affect the money supply.

What is Money?

Many people think of money simply as the currency (paper money and coins) which the government funnels into general circulation, no matter where it ends up. Bankers and economists regard money in terms of how it is used, and say it must perform three functions to be real money:

1) A means of payment for goods and services that is accepted by everyone.

2) A standard value.

3) A store of purchasing power.

At any given time, the U.S. supply of money -- the only kind that meets all three standards -- is generally considered to be the total of all the currency people carry in their pockets plus what they have deposited in bank checking accounts. This is active money -- what economists call M_1 -- readily available for spending. At the end of 1973, the money supply totaled $270.4 billion, of which 77 percent was in checking accounts and the rest in cash.

Another $570.7 billion held in savings accounts is called "near-money" because it is not a readily available means of payment, since a financial institution can require a certain number of days notice to withdraw money from a savings account, although this notice requirement is seldom imposed. Money held in savings accounts still is a store of purchasing power, but it cannot be easily converted into spendable cash.

It is through the nation's banks, with their power to accept checking accounts and to make loans and investments, that virtually all the U.S. money supply flows.

Next to Indians, the banking industry is probably the most regulated entity in the United States. Three federal agencies and 50 state banking authorities supervise the banking industry to see that it is financially sound and serves the needs and convenience of the public. The Office of Comptroller of the Currency was created in 1863 as an arm of the U.S. Treasury Department. It charters and supervises the 4,600 "national" banks and examines each of them at least twice a year. The Federal Deposit Insurance Corporation was created in 1933 and insures each bank account for up to $40,000 in the event of bank failure. All national banks must carry FDIC insurance and virtually all the 14,000 banks do. Only 206 banks, all of them state chartered, and is the most powerful economic control arm of the federal government.

What is the Federal Reserve System?

The Federal Reserve System was established in 1913 following a series of bank panics that resulted from recurring heavy demands for funds held by a few large banks in the financial center of New York and Chicago, where banks in smaller cities and rural areas kept their reserves and excess deposit funds. The system was designed to correct this chaotic situation by serving as a central pool of funds and an elastic supply of bank credit and money to meet fluctuating demands.

AIO Report - Indian Control of Indian Resource Development

The Federal Reserve System is composed of 12 district banks with 24 branches coordinated by a seven-member, policy-making Board of Governors in Washington. It regulates the flow of bank credit and money for member banks, monitors U.S. economic conditions, provides currency and loans to member banks, helps all banks collect and clear checks written elsewhere in the country, transfers funds among cities, and acts as banker for the federal government.

Fewer than 6,000 banks are members of the Federal Reserve System. All 4,600 national banks must belong, but only 1,100 of the more than 9,000 state-chartered banks have chosen to become voluntary members of the system. Altogether, Federal Reserve System member banks account for only about 40 percent of all U.S. banks, but they control nearly 80 percent of all bank deposits. This gives the Federal Reserve commanding influence over the bulk of the nation's money supply.

While national banks are examined by the Comptroller of the Currency, the Federal Reserve has the power to examine both its national and state-chartered members. In practice, however, it regularly supervises only state-chartered members, which are also examined by the appropriate state regulatory authorities. Insured state banks outside the Federal Reserve System are examined by the FDIC and state bank supervisors. Thus, only the 206 uninsured state banks are regularly examined by state authorities alone.

How Does It Affect the Money Supply?

1) The Federal Reserve's most important ~~task~~ is to help keep the economy healthy and growing, with production and employment high and the dollar stable, by using its control over the flow of money and credit to head off the disruptive extremes of excessive expansion or recession, inflation or deflation. To do the job, it has three important tools:

a) Reserve requirements. The Fed requires member banks to keep a certain percentage of their deposits in reserve. Those reserves are set aside in the form of cash in the bank's own vaults or in a reserve account -- similar to a checking account -- with the nearest Federal Reserve bank. The average requirement right now is 15 percent for checking account deposits (the actual percentage depends on the size of the bank) and four percent for the more stable savings account deposits.

b) Discount rate. This is the interest rate member banks must pay to borrow money from the Federal Reserve, currently eight percent.

c) Open market operations. This is the buying or selling of government and non-government securities on the open or "money market," where banks and businesses also trade in debt instruments of various kinds.

To understand the Federal Reserve's clout in using these tools, it is necessary to consider how the banking system uses money. Suppose the Fed's reserve requirement is 20 percent. When Bank A receives a $10 deposit, it must set aside 20 percent or $2 in reserve, but can lend or invest the remaining $8. Now suppose a customer borrows that $8 and uses the money to pay a creditor, let's say a grocery store. The grocery store deposits that $8 in its bank, Bank B. After meeting the 20 percent reserve requirement by setting aside $1.60, Bank B still has $6.40 to lend to someone else. This rippling "multiplier" effect means that the original deposit of $10, after repeated loans and deposits, will have grown to nearly $50 before it is all used up, assuming no one decides to put his or her money under a mattress along the way. In other words, $40 was "created" by the banking system and added to the U.S. money supply from an initial $10 deposit. (Note: It's important to recognize that money is "created" by the banking system as a whole through a series of transactions, not by an individual bank in one fell swoop. No bank can lend more than it receives in deposits, minus the reserve requirement. If we go back to that original deposit of $10, it's obvious that Bank A could not lend out nearly $40 based on the $10 deposit.)

This "multiplier" effect enables the Federal Reserve to stimulate or restrict growth of the money supply to maintain economic stability. If money is scarce or "tight," competing demands from borrowers will drive interest rates higher and eventually borrowing will become too expensive. Business will forego plans to invest in new equipment or hire more employees, individuals will put off buying that new car or television set, and the economy will begin to slow down. If the situation persists, it can lead to economic recession.

If money is too plentiful or "easy," interest rates drop. Plentiful money increases demand, which in turn outruns the economy's ability to produce more goods and services. Consumers start bidding up prices on increasingly scarce goods and the result is inflation.

The Federal Reserve System can counteract both situations. In a recession when the economy needs stimulating, the Federal Reserve System can buy securities on the open market, and the money it spends will flow into checking accounts to be multiplied in loans and investments. If easy money threatens to cause inflation, the Federal Reserve System can sell securities, soaking up money from private dealers who pay for them out of their checking accounts. The money supply then contracts; interest rates begin to rise, and the economy cools down.

Likewise, by raising discount rates, district Federal Reserve Banks can make it more expensive for member banks to borrow. This tends to discourage banks from borrowing to meet heavy demands for loans, or to help force them to pass their higher costs in the form of increased interest rates to their loan customers.

Finally, a change in reserve requirements affects money supply growth. Lowering reserve requirements permits member banks to increase the amount of money they lend -- with the ripple effect of "creating" new money. And increasing the requirements forces them to cut back on the amount of money they lend with the opposite effect.

The Federal Reserve has found open market operations and occasionally changes in reserve requirements much more effective than the discount rate in adjusting the money supply faucet. Consequently, discount rate changes -- which are at the option of each district Federal Reserve Bank, but usually rise or fall uniformly -- generally follow rather than lead the ups and downs of commercial interest rates as determined by supply and demand. Thus we see how banks are controlled.

What Is a Bank?

A bank is a business, making profit by attracting funds from some customers and lending those funds to others. Its basic function is to serve as a financial middleman who arranges contracts between one person who wants to put his idle cash to work earning more money, and another who wants to borrow cash for his personal and business needs. The bulk of the money banks use for loans and investments comes from demand deposits (checking accounts) and time deposits (savings accounts), which totaled $687.5 billion at the end of 1973. The rest, bringing the total to $776.6 billion, came from their shareholders and from the banks' own borrowings.

Interest is nothing more than a price. It is the price banks pay for the use of money in savings deposits and the slightly higher price banks receive for lending or investing their deposits elsewhere. Payment of interest on checking accounts is illegal, but a growing number of banks give customers an implicit return on those funds by not charging a service fee for checking accounts. In 1973, banks earned $53 billion in revenues, mostly from loans and investments, against $46.7 billion in expenses, including savings account interest, taxes and salaries, with net operating earnings totaling $6.3 billion (or $10.2 billion before taxes.)

While other kinds of institutions attract and lend savings money, in most states, banks are unique in their right under law to establish checking accounts, the linchpin of commerce and trade. Moreover, the nation's 14,000 banks stand unrivaled in their "department store" variety of financial services. Those range from reconciling a depositor's checkbook balance to handling complex international transactions for corporate customers, from managing a widow's inheritance to serving as banker for other smaller banks.

Competing with banks in wooing the depositor's dollar are three other types of financial institutions:

Savings and Loan Associations: The nation's 5,448 Savings and Loans were organized to obtain funds for home construction, and nearly all their deposits are tied up in mortgages. Some are owned by their depositors while others are owned by shareholders whose investments got them started. Situated in every state, about half the Savings and Loans are federally chartered, and the rest are chartered by states.

Credit Unions. These 23,000 -- plus nonprofit savings institutions -- have member-depositors with a common bond, usually the same employer. Their dividend-earning savings are loaned to other members needing money for consumer purchases or home improvements.

Mutual Savings Banks. Operating in only 17 states, mainly in the Northeast, the approximately 500 Mutual Savings Banks are mutually owned by their depositors, who receive interest on their savings accounts from bank profits. Most loans are made to persons buying a home, either in their immediate area or in other parts of the country. Mutual Savings Banks also hold sizable corporate and tax-exempt bond portfolios.

In addition, a small number of Morris Plan or industrial banks operate in about two dozen states, generally in the Middle and Far West. First established in 1910 to provide short-term personal loans to blue collar workers, these institutions and their imitators grew to a peak of more than 400 in the late 1930's. Those remaining vary in name and activities according to their state charters, but they generally specialize in consumer installment loans financed from customer deposits, sale of investment certificates, or both.

How Do Banks Use Their Money? Loans are the heart of the banking industry, taking up a little more than half of its total assets (total assets were $835.7 billion at the end of 1973) and yielding nearly two-thirds of its entire revenues. Another one-fourth of those assets is invested in interest bearing government securities. The rest represent cash in vaults or held elsewhere on reserve, building's furniture, and other equipment needed to conduct business.

Loans.

Business Loans. The biggest share (52 percent) of all bank loans, business loans are used primarily by commercial and industrial forms to invest in business expansion. They also help other financial enterprises -- stock brokers and finance companies -- carry out their business. The classic business loan is short-term, meaning it is repaid within one year, and usually meets seasonal needs. For example, a toy manufacturer will borrow to buy raw materials and pay his workers for months before he makes his heaviest sales for the Christmas season, and then repays the loan. So-called "term" loans are repayable in more than a year.

The big business "prime rate" is the interest banks charge their largest and most creditworthy corporate customers, and is one of the sensitive measures of the economy. In 1973, the now-defunct Federal Committee on Interest and Dividends published guidelines for a lower prime rate for loans to small businesses and farmers with assets of less than $1 million. Traditionally, during periods of tight money, most banks have made it a practice to lend money to small business farmers, and others at rates lower than those charged large corporations.

Mortgages. Accounting for about one-fourth of all bank loans, mortgages are extended to help people and businesses buy real estate. More than half of bank mortgages are for home purchases, followed by purchases of business properties such as factories and office buildings, apartments, and farm property. In mortgage holdings, banks rank second to savings and loans associations, which boast one-third of all mortgages by any lender. But banks account for nearly half of all home construction loans, more than half of all home improvement loans, and the bulk of all lending for mobile home purchases. Banks also hold $90 billion in municipal securities, more than any other group of lenders. About $67 billion of that amount was issued to finance residential support facilities, such as transportation, utilities, schools and public services.

At the end of 1973, Americans owned $346.1 billion in mortgages on single-family homes. About 60 percent of all such homes in the United States were mortgaged in 1971, according to the Census Bureau. One-third of all outstanding mortgages were underwritten by the Federal Housing Administration (FHA) or the Veterans Administration (VA), both of which insure repayments to the lender within statutory interest rate limitations. The other two-thirds are "conventional loans" with no such guarantee and with interest rates pegged to market conditions.

Consumer loans. These loans represent 21.7 percent of all bank loans. Although banks did not enter this field until the early 1930's, they greatly expanded their consumer loans operations after World War II. Today banks lead all other lenders with nearly half of the market. Most such loans are for installment purchases, repaid with interest on a monthly basis, and the bulk of those are for cars, boats, furniture, and other expensive long-life durable goods.

In 1972, automobile loans led the list, accounting for 45 percent of all bank installment loans, followed by loans for consumer goods, personal cash (bill paying) loans, and home improvement loans. Personal cash loans include more than $2 billion in credit extended for college tuition, and the increasingly popular "overdraft checking," a form of loan automatically triggered by overdrawing a checking account. Interest charges on all consumer loans vary according to length of payment and type of purchase.

Bank Cards. Bank cards such as Master Charge or Bank Americard are also forms of consumer loans. In 1973, over 11,000 of the nations 14,000 banks were involved in some aspect of the banking card business. At the end of 1973, outstanding card balances amounted to $6.7 billion.

Farm Loans. At the end of 1973, almost 12,000 of the more than 14,000 banks in the United States held $22.7 billion in outstanding farm debt - more than one-fourth of the nation's total farm debt of $81.7 billion. Banks accounted for $6 billion in farm real estate loans and $16.7 billion in agricultural operating loans. An estimated two-thirds of the nation's 2.8 million farmers borrow money during the year to pay expenses before crops are harvested or cattle sold, or for heavy-duty equipment repayable on a long-term basis.

Investments

The next biggest source of banking income, making up about 20 percent, is investments. All are in various state, local, and federal government securities. Banks are generally forbidden to purchase corporate debt or equity securities except on behalf of customers. Nearly half of bank-held securities are long-term state and municipal bonds which local governments sell, usually to finance schools, roads, sewerage, and other expensive construction projects which direct tax assessments cannot cover. Interest earned on these securities is tax-free and for that reason is lower than taxable interest paid on securities offered by corporations or other debt issuers of equal credit standing. The net result is a wide, ready market for government securities - a market which frequently means that tax assessments to the average taxpayer increase more slowly than inflation.

Better than one-third of banks' investments are short-term U.S. Treasury bills and notes with constantly fluctuating interest rates, and the rest are various government agency and public corporation debt notes. Altogether, these securities account for about one-fourth of all bank assets. They are nearly default-free. Unlike most loans, and except for some long-term issues, they can be sold off quickly if a bank finds it needs cash in a hurry for other purposes.

Trusts

Banks receive less than five percent of their revenues in trust fees for managing other people's assets for their benefit or the benefit of their heirs, friends, or employees. Once commonly regarded as a protective haven for the very wealthy or the widow and her children, the trust has become an increasingly popular financial tool to help people of moderate means make the most of their property, starting while they are still alive.

What Banks Are Not.

"Now that we understand what banks are," Rushing said, "it is just as important to understand what banks are not."

1) Banks are not in the business of solving your problems; they may help you but only if you can show them it is in their own interest to do so.

2) Banks are not in the business of solving social problems; they man help solve some but only if they can see that it is in their own self-interest.

3) Banks are not in business to take unwarranted risks.

4) Banks do not understand the different kinds of problems related to Indian business development and will not make the effort to learn unless they can be shown that it is in their self-interest to do so.

So What Are Your Options?

There are not many. The first and perhaps most enticing is to forget the whole thing. Just decide it can't be done and it's not your fault because financial institutions are unconscienable, racist opportunists. Hope that the Congress or the Bureau of Indian Affairs or the Economic Development Administration or somebody will, in their infinite wisdom, provide you with a magic answer. Never mind that it has never happened before to any major extent. Some people don't believe the buffalo will return either.

The second option is more difficult. Learn to make the system work for you.

The largest influences on a banker's credit judgment of a business venture are quality of management, earnings history, long-range prospects for profitable operation and assets pledged as collateral. In a presentation to a financial institution, the burden of proof is on the borrower whether it be a tribe, a corporation or an individual. The better you are prepared to make your presentation, the better your chances are in receiving fair consideration.

1) Quality of Management. A banker will want to know how your tribe is organized - who are your elected officials, how and when they are elected, what has the tribe's past history been in managing its own business. Is there a good accounting system with provisions for checks and balances to insure fiscal accountability. True, it is technically no outsider's business to know the internal workings of a tribe but if you want to borrow money (or if you want a contract or grant from a foundation or government agency these days) the lender has a right to know what to expect or to say no. A banker will want to know how the business enterprise will be managed, who will manage it and how the structure relates to the tribal council. If the track record of the tribe has not been good, be honest about it and state straight forwardly what measures have been taken to insure future success. Your business plan must be clearly stated. What is the proposed business and what will the loan be used for? How will it be structured - a tribal corporation perhaps? Who will manage it and how? What is the product? How much will be produced? How will it be marketed? You will need financial statements not more than ninety days old - your assets minus your liabilities equal net worth. You will need cash flow projections - beginning cash plus income minus cash paid out by month for one year and by quarter for two years. You must prepare a profit and loss projection - gross sales minus cost of goods sold minus expenses equal net profit or loss. You will need an analysis of your debts and proposed debts compared to your net worth. The services of a good accountant to prepare financial documents will be an excellent investment, however, the persons responsible for seeking the loan must have a complete understanding of the documents and must be able to present them well.

2) Earnings History. If you have been in business before, your records must reflect accurately your profits and losses and the difference you expect the loan to make. If yours is an initial effort, you must project your earnings based on reasonable expectations or past records of similar endeavors.

3) Long-range Prospects for Profitable Operation. The ability to repay an installment loan is based not on liquidation of assets, as a short-term credit would be, but rather on the cash flow of the business.

It is essential that your receipts over the term of the loan be sufficient not only for loan repayment but also for operating expenses and net worth expansion.

It is less complicated to predict earnings of a going concern than for a new venture, as past records are good indicators of future performance. Even if you are experienced, however, don't be careless or complacent about projecting earnings.

Basically, the banker will want to know what will be left from your sales dollar after your expected expenses. The expenses -- rent, raw materials, payroll, taxes, maintenance, etc. -- can be determined easily, but sales can be elusive.

Try to gather data on sales margins, projected local markets for your foods, level of competition and general economic trends.

Combine the results in projected financial statements and remember again that there can never be too much information; the more detailed it is, the sooner a decision on your loan application will be reached.

4) Assets Pledged as Collateral. Here the tribe must be particularly imaginative and knowledgeable. While trust land is not mortgageable, crops, cattle, machinery, inventory, minerals, sales contracts for delivery of merchandise, or a lease-hold[1] interest may be. Here again tribal structure and code is very important. A lender must have confidence that any liens will be enforceable; otherwise he simply won't take the risk.

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[1]Lease-hold interest means that, in the case of an agricultural enterprise, for instance, the banker would have the right to assume the lease for the land they were financing development of for a certain length of time or until the value of the loan was received. The mortgage or lease-hold value would normally be based on the amount the tribe (or the banker) could expect to lease the land for were they not developing it themselves.

Choosing Your Source of Credit.

The purpose for which the loan is sought, the amount and the length of time for which the loan is sought all must be considered when you decide which financial institution to approach.

1) Your Local Bank. Your local bank should be your best source of credit because hopefully you will have an already established relationship through their handling of your tribal accounts. There are several reasons why this is not necessarily so, however. One, the bank may be too small; that is, it may not have enough assets to carry a loan of any considerable size. Two, local bankers often share community prejudices and consciously or unconsciously will not give Indian requests impartial consideration. Three, your local bank may be financing your leaseman who is making money for both of them already off your resources. Four, the bank may not be familiar with the type business you are trying to finance and may not be willing to expand into that area. Five, he may be reluctant to enter into a deal with an Indian tribe because of fear of additional federal regulations or complications of dealing with the Bureau of Indian Affairs or other government agencies without any clear cut understanding of what their role in tribal transactions are.

2) Large Banks in Your Region. Tribes have a better chance of securing loans from larger institutions which are apt to have both more assets and more expertise to draw on. Banks in your region are more apt to be familiar with the natural resources, industries and marketing potential in your area which makes it easier for them to evaluate proposed projects. Again, community prejudices and pressures may affect efforts to deal with banks in your region.

3) Large Eastern Based Commercial Banks. Because of size, assets and expertise are more apt to be available. Decisions are less likely to be influenced by local prejudices. On the other hand, major banks give first consideration to major corporations. Competition for loan dollars will be more acute. Accessibility because of distance is also a problem.

4) Insurance Companies. Long-term financing is available in some cases from large insurance companies. Again competition with major corporations and distance may be a problem.

5) Minority Enterprise Small Business Investment Companies. MESBIC's are easier to approach because of the special nature of their mission - to assist minority businesses. Unfortunately, few if any have adequate assets and expertise to make then a likely source of funds.

6) Specialized Lending Agencies. One of the best examples of a specialized lending source is the Farm Credit Association. This system is comprised of the Federal Land Bank System, making long-term real estate loans; the Bank of Cooperatives which provides credit to farmer owned coops; and the Production Credit System.

The Federal Land Banks, established in 1917, provided a reliable long-term credit source for agriculture. But as the country plunged deep into the agricultural depression of the 1920's, Congress saw the need for a solid, dependable source of short and intermediate term notes of farmers and ranchers given to various other financial institutions. Because of bank failures during the depression of the 1930's, the need for the establishment of a dependable credit source at the farmer's level became apparent. Production Credit Associations were set up to fill the credit gap. Since that time, the Production Credit Associations have loaned billions of dollars to farmers and ranchers. Today, all government capital has been repaid with interest and the system is owned by its members - the borrowers themselves. Through the fact that Production Credit Associations are owned by members and therefore Indians may be subjected to local prejudices, they are still a good source for crop loans including aquaculture projects.

The Bank for Cooperatives is an excellent source of funding for Inter-tribal Cooperatives. As tribes begin cooperative efforts with each other, this source should not be forgotten.

Another specialized lending source might be referred to as "the company store." Here, again, the best examples are found in the field of agriculture though the principles could apply to any product. Large companies, say a cotton company, for instance, is dependent on the cotton grown in the area for the operation of its gins and mills. Often, the company will finance the production of a cotton crop in return for an agreement by the farmer that all the cotton produced will be sold to the gin. Some agreements may include a fixed price to be paid for the product. Others may stipulate market price at the time of the sale. The company would recoup its loan from the proceeds when the cotton is sold to the gin and the profit would go to the producer. This kind of arrangement can be tricky, however, they can work well for both parties. The key is to remember that you've got something the company needs - the product - and they've got something you need - financing. The negotiating necessities, then, are obvious.

Tribal funds are also an excellent source of funds for tribal enterprises. If a tribe has capital, then there is no reason why you can't borrow from yourselves to finance new enterprises. Care should be taken to insure that the quality of the project and the background work is as thorough for a loan from the tribe as it would be for a loan from any other source.

7) The American Indian National Bank. This bank has been established by Indians for Indians and will, therefore, be more receptive to Indian needs. Two things should be remembered. One, the American Indian National Bank is federally chartered and therefore is subject to the same regulation as any other bank. Two, they are hampered by a lack of assets and expertise.

8) The Indian Financing Act (P.L. 93-262). The Indian Financing Act of 1974 was signed into law on April 12, 1974. The Act authorizes the appropriation of an additional $50 million to the Indian Revolving Loan Fund presently administered by the Bureau of Indian Affairs. These funds are used to make loans to Indian tribes and individuals for economic development projects and business ventures on or near Indian reservations and for educational purposes. When the full amount authorized is appropriated, the Indian Revolving Loan Fund will total approximately $75 million.

The Act creates a new Indian Loan Guaranty and Insurance Fund which will be used to guarantee or insure loans made by private lenders to Indian tribes or individual members of tribes for up to 90 percent of the unpaid principal and interest due. $20 million is authorized for appropriation in each of the Fiscal Years of 1975, 1976 and 1977. The Act also authorizes the payment of an interest subsidy on those loans guaranteed and/or insured.

The Act establishes the Indian Business Development Program under which non-reimbursable grants may be made to Indians for profit-making economic enterprises on or near Indian reservations. 1977.

The Bureau of Indian Affairs will administer the programs established by the Act and only Indians who qualify for Bureau services are eligible. Following are brief descriptions of the programs authorized:

Title I - Indian Revolving Loan Fund - U.S. Direct Loans

This Loan Fund is a consolidation of existing revolving loan funds already administered by the Bureau of Indian Affairs under three different Acts of Congress: Indian Reorganization Act, Oklahoma Welfare Act, and the Navajo-Hopi Rehabilitation Act. Whereas, there were restrictions on eligibility for loans under each of the Acts listed, Section 101 makes the total revolving loan fund equally available to all Indians having a form of organization satisfactory to the Secretary of Interior. Direct loans to Indian individuals may be made in cases.

The Secretary of the Treasury determines the rate of interest on loans under the Act taking into account the average yield on marketable government securities. Loans will be made only where there is a reasonable prospect of repayment and only after the applicant has exhausted all avenues of reasonable financing from other lenders. Loans will not be made for a term of more than 30 years. Loans may be made for business and educational purposes.

Land purchased with a loan may be taken in trust unless it is outside an Indian reservation or tribal consolidation area. Land outside such areas may still be taken in trust if the purchaser owned a trust or restricted interest in the land before the purchase.

Title II - Loan Guaranty and Insurance

The Secretary of the Interior is authorized to insure or guarantee loans to eligible Indians from private money sources. The Secretary may guarantee up to 90 percent of unpaid principal and interest on a loan. He may also insure 90 percent of the loss on a loan, but only to a maximum of 15 percent of aggregate of loans made by a lender under the Act. No loan to an individual Indian may ge guaranteed or insured which would cause the total unpaid principal indebtedness to exceed $100,000. No loan to an economic enterprise in excess of $100,000 shall be insured unless prior approval of the loan is obtained from the Secretary. The term of insured or guaranteed loans may be no more than 30 years.

Land purchased with a loan insured or guaranteed under this Title may also be taken in trust with the same qualifications imposed by Title I. The aggregate of loans insured or guaranteed under this Title may not exceed $200 million. The appropriation authorization for insurance and guarantee is under Title III.

Title III - Interest Subsidies and Administrative Expenses

This Title authorizes a subsidy on loans insured or guaranteed under Title II so that the borrower will have to pay no more interest than the rate set by the Secretary of the Treasury for loans from the Indian Revolving Loan Fund. It also authorizes an appropriation of $20 million each for the Fiscal Years of 1975, 1976, and 1977 to cover interest subsidies, administrative expenses of the Act, and loan guaranties and insurances.

Title IV - Indian Business Grants

This Title sets up an Indian Business Development Program which can make grants of up to $50,000 to Indians or Indian tribes to start or expand businesses for profit on or near Indian reservations. The grantee must obtain at least 60 percent of the total financing for his business from some other source and must invest his own money in the business, if he is able to. $10 million in each of the years 1975, 1976, and 1977 is authorized to be appropriated under this Title.

Title V

Title V is concerned with providing management and technical assistance to borrowers and grantees under the Act. The Secretary must provide such assistance utilizing Federal Agencies such as S.B.A. or ACTION or may contract with private organizations. The Secretary can use up to five percent of money appropriated under Title III so the maximum amount that can possibly be available for contracts in any one year is $1 million.

A Final Word.

"In short," Rushing concluded, "don't count on banks as being easy sources of funds. You can't use the same song and dance you use for charities or foundations - it just won't work. On the other hand, it can be done by understanding their system, preparing yourself well and showing them that it is in their mercenary self-interest to deal with you. For too long we have listened to white men talk to us and we have watched them have a dialogue between themselves without us. We must now talk for ourselves - and we can do it!"